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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 CHANCE BRANNON,
TIBET ERGUL, and
16 XAVIER BATTEN,

17 Defendants.

No. CR 8:23-100(B)-CJC-2

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT TIBET ERGUL

Hearing Date: May 30, 2024

Hearing Time: 10:00 a.m.

Location: Courtroom of the
Hon. Cormac J.
Carney

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Kathrynne N. Seiden,
22 hereby files its Sentencing Position for Defendant Tibet Ergul.

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1 This Sentencing Position is based upon the attached memorandum
2 of points and authorities, the files and records in this case, and
3 such further evidence and argument as the Court may permit.

4 Dated: May 20, 2024

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 CAMERON L. SCHROEDER
8 Assistant United States Attorney
9 Chief, National Security Division

10 /s/
KATHRYNNE N. SEIDEN
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

"The rifle is in a box in my room waiting to be used in the upcoming race war . . . VOTING DOESN'T CHANGE ANYTHING. IF IT DID, IT WOULD BE ILLEGAL." (Dkt. 83 ("Plea Agreement") ¶ 14.) Defendant wrote these words to his coconspirator, with whom he conspired to attack Orange County's power grid and with whom he firebombed a Planned Parenthood in March 2022. (*Id.*) In February 2024, defendant pled guilty to one count of conspiring to damage an energy facility, in violation of 18 U.S.C. § 1366(a), and one count of intentionally damaging a reproductive health services facility, in violation of 18 U.S.C. § 248(a). (Dkts. 84, 86.) In April 2024, the United States Probation and Pretrial Services Office ("Probation") issued its Presentence Investigation Report (PSR), in which it calculated defendant's offense level as 21 and his Criminal History Category as I, for a Guidelines range of 37 to 46 months' imprisonment. (PSR ¶ 177.) After applying upward departures to account for aggravating and dismissed conduct, Probation concluded that defendant's adjusted Guidelines range is 78 to 97 months and recommended that defendant be sentenced to 78 months' imprisonment, a three-year term of supervised release, \$1,000 in restitution, and a \$125 special assessment. (Dkt. 111.) The government disputes Probation's calculations, but agrees with Probation's sentencing recommendation and respectfully requests that the Court sentence defendant accordingly.

II. STATEMENT OF FACTS

Beginning around February 2022 and continuing through at least March 13, 2022, defendant conspired with his co-defendant, Chance Brannon ("Brannon"), to use a Molotov cocktail to damage a Planned

1 Parenthood. (Plea Agreement ¶ 14.) Defendant became a member of the
2 conspiracy knowing its objective and intending to help accomplish
3 that objective. (Id.) Defendant and Brannon targeted Planned
4 Parenthood because it provided reproductive health services and
5 because they wanted to make a statement against abortion, scare
6 pregnant women away from obtaining abortions, deter doctors, staff,
7 and employees from providing abortions, intimidate and interfere with
8 the patients of the clinic, and encourage others to engage in similar
9 acts of protest. (Id.)

10 On or about March 12, 2022, in defendant's garage, defendant and
11 Brannon put together a Molotov cocktail. (Id.) In the early morning
12 of March 13, 2022, disguised in dark clothing, hoods, masks, and
13 gloves, defendant and Brannon drove to the vicinity of a Planned
14 Parenthood in Orange County, California, approached the entrance,
15 ignited the Molotov cocktail, and threw it at the clinic entrance,
16 intentionally starting a fire. (Id.) Defendant and Brannon then
17 fled. (Id.) Defendant and Brannon intentionally and successfully
18 damaged the clinic, which was forced to close temporarily and to
19 reschedule approximately 30 patients' appointments. (Id.) The day
20 after he and Brannon started the fire, defendant bragged to an
21 acquaintance about having started the fire and noted that he wished
22 he "could've recorded the combustion." (Id.)

23 In June 2022, following the Supreme Court's decision in Dobbs v.
24 Jackson Women's Health Organization, in which the Court overturned
25 Roe v. Wade, defendant and Brannon planned to use a second Molotov
26 cocktail, which they kept in a backpack in defendant's garage, to
27 damage a second Planned Parenthood clinic. (Id.) Defendant and
28

1 Brannon did not follow through with their plan because they saw law
2 enforcement near the clinic they planned to target. (Id.)

3 Beginning sometime in 2022 and continuing through approximately
4 the time of their arrest, defendant conspired and agreed with others,
5 including Brannon, to knowingly and willfully damage the property of
6 an energy facility, namely, a Southern California Edison electrical
7 substation, and to cause interruption to and impairment of the
8 facility's functioning, with the goal of debilitating Orange County's
9 power grid. (Id.) Defendant and his coconspirators planned to do so
10 using either firearms or the Molotov cocktail defendant possessed in
11 his garage. (Id.) Defendant and Brannon consulted with an associate
12 about surveillance, drone operations, and firearms. (Id.)

13 In March 2023, defendant messaged an associate to say that he
14 had found a substation to target in Orange, California, which had a
15 "fence area [] nearby enough to a switch." (Id.) Defendant also
16 sent Brannon aerial photographs of the substation and suggested
17 "go[ing] there at 3am one day" to do a "drive thru" and either
18 climbing on the roof of a nearby building or throwing the Molotov
19 cocktail "across the fence" to reach a "critical portion" of the
20 substation. (Id.)

21 At one point, defendant wrote Brannon a letter in which he
22 stated: "The rifle is in a box in my room waiting to be used in the
23 upcoming race war . . . VOTING DOESN'T CHANGE ANYTHING. IF IT DID,
24 IT WOULD BE ILLEGAL." (Id.) Defendant then wrote: "Every single day
25 spent alongside these godforsaken 2 party fags make [sic] me hate
26 American politics more. I have an unbelievable desire to murder
27 journalists and politicians as soon as some chaotic event begins."
28 (Id.)

1 Throughout the early summer of 2023, defendant and Brannon also
2 discussed and researched how to attack the parking lot or electrical
3 room of Dodger Stadium on a night celebrating LGBTQ pride, including
4 by using a remote-detonated device. (Id.) As part of those
5 conversations, Brannon shared a "WW2 sabotage manual" with defendant
6 and the two discussed doing "dry runs" to "case" the stadium. (Id.)
7 Defendant and Brannon were arrested two days before the Pride Night
8 at Dodger stadium. (Id.)

9 Defendant and Brannon appear to have subscribed to and been
10 motivated in part by their shared neo-Nazi ideology. For example, a
11 photograph recovered on defendant's phone showed him, Brannon, and
12 another friend standing in the "Heil Hitler" stance while a fourth
13 friend knelt with a large rifle. (PSR ¶ 48.) Another photo from
14 defendant's phone showed Brannon smiling with a Nazi swastika armband
15 superimposed on his arm. (Id.) In Brannon's bedroom, agents found
16 handwritten letters from defendant, including one titled "United
17 States Aryan Squad" in which defendant drew symbols associated with
18 the Nazis and wrote: "I feel that you might've forgotten the reason
19 why we train and become stronger, faster, and smarter than the
20 average zambo and mulatto . . . I have not messed with the AR-15 in a
21 while. However, I'll go buy a roll pin punch set and install the new
22 handguard soon." (Id. ¶ 50.) Defendant then described watching the
23 TV show "Man in the high castle" and said he "quit" because, in part,
24 the "main protagonists are a bunch of kikes living in a commune[.]"
25 (Id. ¶ 51.) Defendant then wrote in large letters: "BOMB ((THEM))
26 NOW" and signed the letter: Good luck to you and I hope you become
27 the strongest killer Marine when you finish BC. 1488 [Swastika
28

1 symbol] Sig heil [drawn American flag] Semper Fi. Love, Tibet.”
2 (Id.)

3 **III. GUIDELINE CALCULATIONS**

4 **A. Offense Levels and Grouping**

5 As Probation correctly determined, Counts One and Two do not
6 group because they do not involve the same victim, neither embodies
7 conduct that is an offense characteristic to the applicable guideline
8 for the other, and 2H1.1 (which applies to Count Two) is specifically
9 excluded from grouping under 3D1.2(d). (PSR ¶ 62.) Accordingly, the
10 court must determine the offense level applicable to each group and
11 then determine the combined offense level applicable to all groups.
12 See U.S.S.G. §§ 3D1.3, 3D1.4.

13 Probation correctly determined that for the group representing
14 Count One (conspiracy to damage an energy facility), the base offense
15 level is 7 under U.S.S.G. § 2B1.1 and defendant's offense level
16 increases to 14 because he possessed a dangerous weapon in connection
17 with the offense. (PSR ¶¶ 63-65.)

18 For the group representing Count Two (intentional damage to a
19 reproductive health services facility), Probation determined that
20 defendant's offense level is 24 because (1) U.S.S.G. § 2H1.1
21 contemplates application of the offense level from the offense
22 guideline applicable to the underlying offense; (2) defendant's
23 underlying offense was arson, in violation of 18 U.S.C. § 844(i); and
24 (3) defendant's offense level would have been 24 under 2K1.4. (PSR
25 ¶ 71.) The application notes of § 2H1.1 provide that the “offense
26 guideline applicable to the underlying offense” means the offense
27 guideline applicable to any conduct established by the offense of
28 conviction. U.S.S.G. § 2H1.1, cmt. 1. While defendant did commit

1 arson and admitted those facts as part of his plea agreement, his
2 conviction under 18 U.S.C. § 248(a) does not, standing alone,
3 necessarily establish that conduct. Cf. United States v. Allen, 341
4 F.3d 870, 895-96 (9th Cir. 2003) (finding that application of
5 aggravated assault guideline was appropriate where the elements of
6 civil rights statute under which defendant was convicted included the
7 elements of aggravated assault). Accordingly, the government abides
8 by the Plea Agreement and submits that the offense level applicable
9 to the group representing Count Two is 12 because the offense
10 involved two or more participants.¹ See U.S.S.G. § 2H1.1(a)(2).

11 Under the government's calculations, the group encompassing
12 Count One, which has an offense level of 14, counts as one unit. See
13 U.S.S.G. § 3D1.4(a). The group that accounts for Count Two has an
14 offense level of 12, which is between 1 and 4 levels less serious
15 than that for Count One, and thus counts as one additional unit. Id.
16 Because defendants' convictions amount to two units under § 3D1.4,
17 the Court should apply a two-level upward adjustment to the higher
18 offense level of 14. U.S.S.G. § 3D1.4. Thus, defendant's adjusted
19 offense level is 16.

23
24 ¹ Even if Probation were correct that the Guideline applicable
25 to arson applies, convictions under 18 U.S.C. § 248(a) carry a
26 statutory maximum sentence of 12 months' imprisonment. Thus,
27 defendant's Guidelines for Count Two would be 12 months'
28 imprisonment, which corresponds to an offense level of 10. See
U.S.S.G. § 5G1.1(a) (capping the guidelines range at statutorily
authorized maximum sentence). Because an offense level of 10 is
still within 1-4 levels of comparable seriousness as the group
representing Count One (which has an offense level of 14), defendant
would receive the same two-level upward enhancement contemplated by
the Plea Agreement. See U.S.S.G. § 3D1.4.

1 **B. Upward Departure for Dismissed Conduct**

2 Under U.S.S.G. § 5K2.21, an upward departure is warranted to
3 account for the actual seriousness of an offense based on conduct
4 underlying a charge not pursued in the case as part of a plea
5 agreement. Here, the government agreed to dismiss the counts for
6 arson and conspiracy as part of the Plea Agreement. As Probation
7 noted, defendant's offense level for the arson would have been 24
8 under U.S.S.G. § 2K1.4. (PSR ¶¶ 75-77.) Thus, the parties agree
9 that an eight-level upward departure is warranted to bring
10 defendant's offense level to 24, which would have been the applicable
11 offense level had defendant been required to plead guilty to the
12 counts for which he was initially charged. (Plea Agreement ¶ 16.)

13 **C. Upward Departure for Aggravating Circumstances**

14 Under U.S.S.G. § 5K2.0(a)(2)(A), the Court may depart from the
15 applicable range if there are circumstances that were not adequately
16 taken into consideration in determining that range. Here, the
17 applicable Guidelines do not account for defendant's motivations;
18 namely, his desire to instigate a race war or his desire to
19 intimidate civilians by making a violent political statement.

20 Notably, Comment 4 to the terrorism enhancement provides that
21 "an upward departure [is] warranted" in a situation where the
22 "offense involved, or was intended to promote, one of the offenses
23 specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B)" and "the
24 terrorist motive was to intimidate or coerce a civilian population."
25 U.S.S.G. § 3A1.4. Both arson (18 U.S.C. § 844(i)) and conspiracy to
26 damage an energy facility (18 U.S.C. § 1366(a)) are enumerated crimes
27 under 18 U.S.C. § 2332b(g)(5)(B) and defendant admitted that his
28 motivation in attacking the Planned Parenthood was to intimidate and

1 interfere with clinic patients. (Plea Agreement ¶ 14.) Similarly,
2 defendant's writings to Brannon reflect that their goal in attacking
3 the energy facility was to instigate a race war. (PSR ¶ 49.) Thus,
4 the terrorism enhancement contemplates an upward departure in
5 situations exactly like this one. Because defendant's terroristic
6 motivation was not factored into his applicable Guideline range, a
7 five-level upward departure is warranted, as agreed to in the Plea
8 Agreement. (Plea Agreement ¶ 16.)

9 Factoring an offense level of 16, an eight-level upward
10 departure under U.S.S.G. § 5K2.21, a five-level upward departure
11 under U.S.S.G. § 5K2.0(a)(2)(A), and three points for acceptance of
12 responsibility, defendant's total adjusted offense level is 26.
13 Factoring in his Criminal History Category of I, his adjusted
14 Guidelines range is 63 to 78 months' imprisonment.

15 **IV. 78 MONTHS' IMPRISONMENT AND 3 YEARS' SUPERVISED RELEASE IS**
16 **SUFFICIENT BUT NOT GREATER THAN NECESSARY**

17 First, the nature and circumstances of defendant's offenses
18 warrant a 78-month sentence. Defendant's crimes -- throwing a
19 homemade incendiary device at the entrance of a healthcare clinic and
20 conspiring to debilitate Orange County's electrical grid -- were both
21 egregious. So too was his motivation for committing those crimes,
22 which were driven by defendant's desire to intimidate healthcare
23 patients and professionals and to create societal instability.
24 Defendant also admitted that he sought to repeat his conduct by
25 attacking a second Planned Parenthood. In short, defendant
26 weaponized fear and intimidation to achieve his misguided political
27 ends. The callousness of defendant's conduct here warrants a 78-
28 month sentence.

1 Second, defendant's history and characteristics are both
2 mitigating and aggravating. On one hand, defendant is relatively
3 young and has faced difficulties arising from his mental health,
4 transition to the United States, and the influence of older peers.
5 (PSR ¶¶ 114-142, 149-154.) On the other, defendant has, at times,
6 exacerbated his own mental health issues through substance abuse,
7 which on one occasion caused a violent outburst for which defendant
8 was criminally charged. (Id. ¶¶ 105, 158.)

9 Moreover, defendant appears to have adopted a racially motivated
10 violent ideology that inspired him to plan (and in one instance
11 commit) dangerous and cowardly acts which could have harmed or even
12 killed real victims. Notably, even factoring in the upward
13 departures agreed to by the parties, defendant's Guidelines
14 calculations do not account for much of defendant's conduct,
15 including his plan to attack a second Planned Parenthood or Dodger
16 Stadium on LGBTQ pride night. A 78-month sentence appropriately
17 accounts for defendant's history of plotting dangerous attacks, while
18 still accounting for defendant's mitigating struggles and relatively
19 young age.

20 Third, a 78-month sentence is warranted to protect the public
21 from defendant's dangerous conduct. Although defendant paints his
22 conduct with respect to Planned Parenthood as having occurred on a
23 whim, his own admissions make clear that he sought to repeat that
24 incident by attacking a second clinic. Moreover, defendant was
25 planning additional dangerous and illegal attacks at the time of his
26 arrest. Thus, a 78-month sentence is warranted to deter him from
27 committing similar acts in the future and to impress on him the
28 importance of complying with the law.

